IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.2811/2004

M/s Krystal Poly Fab Ltd. Ors. ..... Petitioner
! through: Mr. Rajesh Ranjan, Advocate

VERSUS

$ M/s. Indo Rama Synthetics India Ltd. ..... Respondent
^ through: Mr. Simran Mehta, Advocate

% **D**ATE OF DECISION: 30-08-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.(Oral)

1. Complaint under Section 138 read with Section 141 NI Act has resulted in issuance of a summoning order against the petitioners.

2. The summoning order is questioned only on one ground. It is urged that on 14.12.1998 BIFR had passed an order under Section 22 A of SICA.

3. The direction issued vide order dated 14.12.1998 is as contained in para 9 of the order. It reads as under:-

> “9. The Bench also directed u/s 22A of SICA that the company should not dispose of any of its fixed assets without prior approval of BIFR. It could, however, continue to rotate its current assets in the normal course of business but ensure that all sale proceeds and other related transactions were routed through its financing bankers only.”

4. Conceding that the order restricts the direction to the fixed assets of the company, learned counsel for the petitioner urges that the latter part of the direction was to the effect that business of the company had to be transacted only through the operating agency. Counsel states that operating agency was appointed as per para 7 of the said order.

5. Para 7 of the order reads as under:-

> “7. Further, on the basis of submissions made and the material on record, the Bench observed that a package u/s 17(2) was not possible. Accordingly, in exercise of he powers conferred on under section 17(3) of the Act, the Bench appointed CBI as the Operating Agency (OA) to examine the viability and prepare a viability study report keeping in view the provisions of Section 18 of the Act and the 'Measures and Guidelines' enclosed.”

6. A perusal of para 7 of the order shows that the Central Bank of India was appointed as the operating agency limited with the mandate to examine the viability report and submit the same for consideration of the Board.

7. Neither para 7 nor para 9 read by themselves or co-

jointly lead to the conclusion that business operations of the

company were taken over by the operating agency.

8. In that view of the matter, the petitioners cannot evade liability in respect of cheques issued by them.

9. In the decision reported as (2000) 2 SCC 745 *Kusum Ingots and Alloys Vs. Pennar Peterson Securities Ltd.* law was stated with clarity. Clarity being that if order under Section 22 A of SICA restrained the company from dealing with its assets, the company nor its directors would be liable to be prosecuted under Section 138 of the NI Act in respect of cheques issued from the account of the company.

10. The ratio has to be understood with reference to the injunctive order relatable the fixed assets and/or the movable assets.

11. In the instant case, the company was permitted to carry on business transactions. There was no embargo on the company or its director to deal with the movable assets of the company or to deal with the funds lying to the credit of the company.

12. I find no merits in the petition.

13. Dismissed.

August 30, 2007 **PRADEEP NANDRAJOG, J.**
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